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December 13, 2005

Ron Jones, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505
Attention: Sharla Dillon

Via Hand Delivery

Re: Rulemaking for the Regulation of Wastewater Companies
Docket No. 05-00105

Dear Chairman Jones:

After the hearing on the proposed Wastewater Regulations on November 21, 2005, I reviewed the proposed rules one final time. In this last review I became concerned about a potential conflict between proposed Rule 1220-4-13-.08 and T.C.A. § 65-4-112(b).

Rule 1220-4-13-.08 provides that any person operating, managing, or controlling a public wastewater utility that intends to sell or transfer the public wastewater utility or its assets must submit a Petition to the Authority to obtain approval of the transaction. As drafted this proposed rule appears to apply to any sale or transfer of a public wastewater utility.

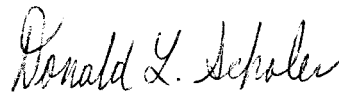
Under T.C.A. § 65-4-112(b), the legislature has provided, "Any public utility as defined in § 65-4-101, may, without the approval or consent of the state of Tennessee or the authority, or any other agency of the state, sell, lease, or otherwise dispose of any of its property, including, but without limitation, franchises, rights, facilities, and other assets, and its capital stock, to any of the nonutilities defined in § 65-4-101." Under the terms of this statute, the sale or transfer of a public utility regulated by the Authority does not require the approval of the Authority when the public utility sells or transfers its property to a nonutility. Therefore, a public wastewater utility which sells or transfers the utility to a municipality, utility district, county or any other nonutility is not required to obtain the approval of the Authority for such sale or transfer.

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The Authority does not have the power to adopt rules which are contrary to existing Tennessee statutes. The Authority might want to consider modifying proposed Rule 1220-4-13-.08 so that it is consistent with T.C.A. § 65-4-112(b) before the final rule is adopted. A change in the proposed rule now may prevent a future dispute over whether the sale or transfer of a public wastewater utility to a nonutility as defined in T.C.A. § 64-4-101 requires the filing of a Petition to obtain approval of the sale or transfer as is currently required under the proposed rule language.

Thank you for your consideration of my comments on this issue.

Sincerely yours,

A handwritten signature in cursive script, reading "Donald L. Scholes".

DONALD L. SCHOLES

c: Richard Collier, General Counsel